

U.S. DISTRICT COURT, U.S.
FILED
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979

No. 79-719

EDDIE THOMPSON, JR.
PATRICIA THOMPSON
PLAINTIFFS-PETITIONERS,

vs.

PEOPLES LIBERTY BANK
MERV GRAYSON, JR.
MERV GRAYSON, SR.
RICHARD NELSON
JOSEPH CONDIT
DEFENDANTS-RESPONDENTS.

**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

EDDIE THOMPSON, JR., Pro Se
736 Highland Avenue
Covington, Kentucky 41011
(606) 491-6278

PATRICIA THOMPSON, Pro Se
736 Highland Avenue
Covington, Kentucky 41011
(606) 491-6278

(Certificate of Service on inside cover)

I hereby certify that 3 copies of the foregoing Petition have been served by the United States mail, upon: Mr. Richard Nelson, 11 W. 6th St.; Mr. Charles Wagner, 906 City-County Building; Mr. Gerald Benzinger/Mr. Richard Meyer, 219 Garrard; and Mr. Rodney Bryson, First National Bank Building, 6th & Madison, all of Covington, Kentucky 41011.

.....
EDDIE THOMPSON, JR.

.....
PATRICIA THOMPSON

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NO. -----

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DEFENDANTS-RESPONDENTS.

**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Petitioners, Patricia Thompson and Eddie Thompson, Jr. respectfully pray that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Sixth Circuit entered in the above styled case on July 11, 1979; Petition for rehearing denied on September 7, 1979. Mandate issued on September 18, 1979 and was filed on September 19, 1979.

OPINION BELOW

The opinion of the Court of Appeals is attached to this Petition as Appendix page 14a. The Order denying Petition for rehearing is attached as Appendix page 17a. The opinion of the Court of Appeals issued as a mandate on September 18, 1979 and was filed in U.S. District Court, at Lexington, Kentucky, on September 19, 1979. The Order and Memorandum of the District Court are attached as Appendix pages 7a and 8a, respectively.

JURISDICTION

The Judgment of the Court of Appeals was entered on July 11, 1979. Appendix page 14a. A timely filed Petition for rehearing was denied on September 11, 1979, and this Petition for Certiorari is filed within ninety days of that date. The Court's jurisdiction is invoked pursuant to 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Does dismissing a civil rights action on the merits without a hearing deny plaintiffs due process of law in the constitutional sense?
2. Are members of a class protected against constitutional torts?
3. Are defendants entitled to a dismissal on the merits, when defendants are in default on complaint as Amended by order of the court and no timely motion to dismiss has been filed?
4. Did complaint state a cause of action where plaintiffs alleged illegal acts by defendants that caused deprivation of liberty and property without due process of

law and subjected plaintiffs' home and possessions to unlawful search and seizure?

5. Under Kentucky Law can a sale of land under execution be had without an appraisal?
6. Under Kentucky Law does a Judgment foreclosing a mortgage divest title or confer possession?

PRELIMINARY STATEMENT

Respondents have not denied any allegation made in the instant case or other cases filed because of their alleged illegal acts, nor do counsels for respondents offer any defense other than relief is available under State Law. The alleged illegal foreclosure is Kenton Circuit Court #31053.

After the illegal foreclosure, the Bank's attorney, Mr. Richard Nelson, filed a forcible detainer (ejectment proceeding) in the Kenton Quarterly Court, #9817. Petitioners claimed they had been illegally foreclosed on and that they were the rightful, legal owners of said property. The Kenton Quarterly Court denied petitioners' request for a trial by jury and rendered Judgment for Respondent Peoples Liberty Bank, that was traversed to the Kenton Circuit Court, #33430. Mr. Nelson knew the scheme would be uncovered in a jury trial . . . So Mr. Nelson had Judge Goodenough to sign 2 void orders. The first order was appealed, and the appeal was dismissed on March 31, 1978, because the order was void. The second void order was signed on April 12, 1978. On April 15, 1978, Mr. Nelson had police officers beat Eddie Thompson, Jr. for no reason. A complaint was filed with the Mayor of Covington, but there has never been a hearing.

On July 19, 1978, Sheriff's deputies and police officers executed the void order signed on April 12, 1978, without any legal right to do so. Police officers were paid by the Bank to occupy petitioners' home. The Bank and their attorneys had Mr. John Elfers, Kenton County Attorney, to sign a warrant charging petitioner Eddie Thompson, Jr. with Criminal trespass.

Subsequently, Mr. Nelson (the Bank's attorney) moved the Circuit Court to dismiss the ejectment proceeding (33430) with prejudice. Said Motion was granted.

STATEMENT

The instant case presents important questions concerning the construction of certain Civil Rights Statutes, 42 U.S.C. 1983 and 1985, etc.

Section 1983 reads as follows:

"Every person who, under color of *statute*, ordinance, regulation, custom, or usage, of any state or Territory, subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Section 1985 provides . . . "A complaint must allege that the defendants (1) conspire or go in disguise on the highway or on the premises of another (2) for the purpose of depriving, either directly or indirectly, any person or class of persons the equal protection of the laws, or of equal privileges and immunities under the law." It must then assert that one or more of the conspirators (3) did

or caused to be done, "any act in furtherance of the object of (the) conspiracy," whereby another was (4A) "injured in his person or property" or (4b) "deprived of having and exercising any right or privilege of a citizen of the United States."

This is a pro se complaint.

The District Court found that the action did not arise under the constitution or laws of the United States and no claim for relief was stated under any of the Civil Rights laws relied upon by the plaintiffs. Appendix page 8a. The Court of Appeals affirmed. Appendix page 14a.

Neither plaintiffs or any counsel for plaintiffs have appeared in any court on this matter. Plaintiffs have alleged inter alia (1) that defendants had conspired to illegally (unlawfully) take their real property and business income, Complaint Numbers 10, 14, 58; (2) that one piece of property was their home, Complaint Number 34; (3) that defendant/s refused payment on plaintiffs' home, Complaint Numbers 37, 39; (4) that their home was worth at least Thirty Thousand Dollars (\$30,000); (5) that Eddie Thompson, Jr. had an oral agreement with Mr. Grayson, Sr. for \$20,000 to expand a rehab project at 1013-15 Greenup Street, Complaint Number 20; (6) that defendants conspired to have Patricia Thompson arrested, Complaint Numbers 48, 49; (7) that Mr. Grayson's/s representations were false and fraudulent, and they knew them to be so, Complaint Number 32; (8) that defendants took these properties illegally and under color of state law, Complaint Number 57; (9) that the acts were done because plaintiffs are Negro (by Amendment as of Course) and that Eddie Thompson, Jr. had contested a Primary election in 1975, Complaint Number 10; and that the conduct on the part of all defendants have caused plain-

tiffs much humiliation, undue anxiety, and mental suffering, Complaint Number 61.

Since this complaint has been pending, defendants have had plaintiff Eddie Thompson, Jr. beaten by police officers, his life threatened by police officers, and attempted to have him framed on Criminal Charges (Affidavit to Court of Appeals).

This action was dismissed by the District Court on July 31, 1978. Within a month, defendants had and/or caused 2 men to break into plaintiffs' home while police officers stood guard to prevent Eddie Thompson, Jr. from doing anything. Subsequently, defendants had and/or caused all of plaintiffs' furniture, clothing, business tools, business records, money, and other personal effects to be stolen from their home.

REASONS FOR GRANTING WRIT

The allegations of the Complaint should be accepted as true. *Cooper v. Pate*, 378 U.S. 546 (1964).

And because this is a *Pro Se* complaint alleging deprivation of Civil Rights (liberties and property) it must be liberally construed. *Haines v. Kerner*, 30 LEd 2d 652; *Conley v. Gibson*, 2 LEd 2d 80; *Azar v. Conley*, 456 F 2d 1382.

Plaintiffs-petitioners believe that had the District Court granted their motion for a hearing any misconception about the Complaint could have been resolved in their favor.

The right of a litigant to be heard is one of the fundamental rights of due process of law. A denial of the right requires a reversal. *Hovey v. Elliot*, 42 LEd 215.

This court held in *Reynolds v. Cochran*, 5 LEd 2d 754, that "A State or Federal court which arbitrarily refuses to hear a party by counsel employed by and appearing for him in any case, Civil or Criminal, denies the party a hearing and therefore denies the party due process of law in the constitutional sense.

Arresting Patricia Thompson to carry out unlawful acts and subjecting plaintiffs' property and possessions to unlawful search and seizure were constitutional torts.

It was held in *Bell v. Hood*, Supra, that "Respondent imprisoning the petitioner in violation of his constitutional right to be free from deprivation of his liberty and without due process of law and subjecting their premises to search and their possessions to seizure, in violation of their constitutional right to be free from unreasonable search and seizure was subject to damages." 90 LEd 939.

"The right of people to be secure in their person, houses, papers, and effects, against unreasonable search and seizure shall not be violated." *Bivens v. Six Unknown Federal Narcotics Agents*, 29 LEd 2d 619.

"Allegation of facts constituting a deprivation under color of state authority of a right guaranteed by the Fourteenth Amendment satisfies to the extent of 42 U.S.C. 1983, giving a right of action against a person who under color of state law, custom or usage, subjects another to the deprivation of any rights, privileges, or immunities secured by the Federal constitution." *Monroe v. Pape*, Supra.

Counsel for defendants claim that plaintiffs have a right under state law.

"It is no answer that the state has a law which if enforced would give relief: the federal remedy is supple-

mentary to the state remedy and the state remedy need not be first sought and refused before the federal one is invoked . . . 42 U.S.C. 1983 . . . (1) It overrides certain kinds of state law; (2) it provides a remedy where state law is inadequate; and (3) it provides a federal remedy though the state remedy, adequate in theory, is not available in practice." *Monroe v. Pape*, Supra.

"Pursuant to its power to enforce the Thirteenth Amendment it is rational for congress to determine that all citizens, in their dealing with private owners of property as well as public authorities, are entitled to the same right to inherit, purchase, lease, sell and convey property as is enjoyed by white citizens." *Jones v. Mayers Co.*, 20 LEd 2d 1189.

Examination of the instant complaint reveals that it (1) "alleged that a conspiracy existed, (2) its purpose to deprive a person or class of persons of equal protection of the law, (3) an act in furtherance of the conspiracy, and (4) an injury or deprivation of the civil rights of the plaintiffs." 42 U.S.C. 1985 (3), *Griffin v. Breckenridge*, 29 LEd 2d 338.

"Action for conspiracy to deprive persons or class of persons of equal protection of the law or privileges and immunities reaches purely private actions without any requirement of state action." *Griffin v. Breckenridge*, Supra.

Federal jurisdiction under 28 U.S.C. 1333 (3) which grants to federal district court original jurisdiction of civil action authorized by law to redress the deprivation under color of state law, regulations of any rights, privilege, or immunity secured by the federal statute providing for equal rights of citizens is not defeated by possibility that the complaint may ultimately be held to fail to state a cause of action. *Hagen v. Levine*, 39 LEd 2d 577.

The instant action is easily distinguishable from the *Ohio Inn* Case on its facts. In *Ohio Inns*, there are no allegations that the unlawful acts were class based and motivated by invidiously discriminatory animus.

The decision of the Sixth Circuit Court of Appeals in the instant case is contrary to its holding in *Azar v. Conley*, 456 F 2d 1382; *Cameron v. Brock*, 473 F 2d 608; and *Glasson v. City of Louisville*, 518 F 2d 899, and review is necessary in order to secure and maintain uniformity of decision in that court.

In *Azar v. Conley* the court held, "Following dismissal of complaint, the reviewing court has duty to view the allegations of the complaint in the light most favorable to plaintiffs, assuming the truth of the factual allegations contained therein."

In *Cameron v. Brock* the court held that "protection of federal statute, which creates a cause of action against persons who conspire to deprive any person or class of persons equal protection of the law or of equal privileges and immunities under the law, reaches clearly defined classes, such as supporters of a political candidate, if a plaintiff can show that he was denied the protection of the law because of the class of which he is a member, he has an actionable claim under the statute.

In *Glasson v. City of Louisville* the court held that "Where protester's right to free expression was violated by police officer who tore up her protest sign, protester could recover under Civil Rights statute not only out of pocket expense but also for emotional and mental distress." U.S. C.A. Const. 1, 14.

Respondent Peoples Liberty Bank claims that it bought petitioners' home at a foreclosure sale. There was no appraisal as required by K.R.S. 426.030.

"Sale of land under execution without appraisement is void . . . No coercive sale for debt can be lawfully made in absence of this violation." *Angel v. Byars*, 153 Ky. 208; *Adams v. Napier*, 334 S.W. 2d 915.

In this state a judgment foreclosing a mortgage as commonly expressed, does not divest title or confer possession. *Springfield Fire and Marine Insurance Co. v. Phillips*, 17 K.L.R. (abstract) 390.

"Since foreclosure of a mortgage is forbidden by this section, the mortgage does not convey an estate in land to the mortgagee. It gives the mortgagee a lien upon the premises to secure the debt on the undertaking referred to in the instrument." *Morgan v. Wickliffe* (1902), 24 K.L.R. 1039, 70 S.W. 680.

CONCLUSION

For the foregoing reasons, probable jurisdiction should be noted.

Respectfully submitted,

EDDIE THOMPSON, JR., Pro Se

PATRICIA THOMPSON, Pro Se

APPENDIX

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO. 77-72

EDDIE THOMPSON, JR., ET AL.,
PLAINTIFFS,
VS:
PEOPLE'S LIBERTY BANK, ET AL.,
DEFENDANTS.

ORDER

(Filed August 12, 1977)

Defendants Peoples Liberty Bank and Trust Company, Merv Grayson, Sr., and Richard S. Nelson, having, on August 9, 1977, filed a motion to dismiss, and the Court being advised, it is

ORDERED:

1. That movants be granted twenty (20) days from the date of this Order within which to serve and file a memorandum in support of their motion.
2. That all other parties be granted twenty (20) days thereafter within which to serve and file a responsive memorandum.

3. At the expiration of forty (40) days from the date of this Order the Clerk is directed to forward this record to the undersigned Judge for his consideration.

This 12 day of August, 1977.

/s/ EUGENE E. SILER, JR.
JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO. 77-72

EDDIE THOMPSON, JR., ET AL.,
PLAINTIFFS,
VS:
PEOPLE'S LIBERTY BANK, ET AL.,
DEFENDANTS.

ORDER
(Filed September 2, 1977)

Defendant Condit having, on August 10, 1977, filed three motions to dismiss this action, and a motion for additional time within which to plead, and having filed memoranda in support of his motions to dismiss, and the Court being advised, and defendant Merv Grayson, Jr.,

having, on August 12, 1977, filed a motion to dismiss and supporting memorandum, and the Court being advised, and plaintiff having, on August 29, 1977, tendered an amended complaint and the Court being advised, it is

ORDERED AS FOLLOWS:

1. That plaintiffs' amended complaint be filed. FED.R.CIV.P. 15 (a).
2. That plaintiffs, and all other parties, be granted twenty (20) days from the date of this Order within which to serve and file a responsive memorandum to defendant Merv Grayson, Jr.'s, motion to dismiss.
3. That plaintiffs, and all other parties be granted twenty (20) days from the date of this Order within which to serve and file responsive memoranda to defendant Condit's motions to dismiss.
4. That defendant Condit's motion for an extension of time within which to plead be sustained. FED.R.CIV.P. 12 (a).
5. At the expiration of twenty (20) days from the date of this Order, the Clerk is directed to forward the record in this case to the undersigned Judge for his consideration.

This 2 day of September, 1977.

/s/ EUGENE E. SILER, JR.
JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO. 77-72

EDDIE THOMPSON, JR., ET AL.,
PLAINTIFFS,

VS:

PEOPLE'S LIBERTY BANK, ET AL.,
DEFENDANTS.

ORDER

(Filed September 28, 1977)

The defendant, Merv Grayson, Jr., having moved the Court on September 26, 1977, for an Order enlarging the time within which this defendant may file his answer to plaintiffs' amended complaint, it is hereby

ORDERED that the defendant's motion be and is sustained and the defendant is granted a period of ten days from the date of the Court's ruling on pending motions within which to answer. FED.R.CIV.P. 12 (3).

This 28 day of September, 1977.

/s/ EUGENE E. SILER, JR.
JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO. 77-72

EDDIE THOMPSON, JR., ET AL.,
PLAINTIFFS,

VS:

PEOPLE'S LIBERTY BANK, ET AL.,
DEFENDANTS.

ORDER

(Filed November 25, 1977)

Rodney S. Bryson having moved the Court on November 18, 1977, to note his name as attorney of record for defendant, Richard Nelson, it is

ORDERED AS FOLLOWS:

1. The motion be and is hereby sustained and Rodney S. Bryson shall be noted as attorney of record for defendant, Nelson.
2. The Clerk of the Court shall return this file to the undersigned Judge for his consideration of pending motions.

This 25 day of November, 1977.



/s/ EUGENE E. SILER, JR.
JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO. 77-72

EDDIE THOMPSON, JR., ET AL.,
PLAINTIFFS,
VS:
PEOPLE'S LIBERTY BANK, ET AL.,
DEFENDANTS.

ORDER

(Filed December 5, 1977)

Plaintiff, Eddie Thompson, Jr., having moved the Court on November 25, 1977, for an Order compelling answers to interrogatories, it is hereby

ORDERED AS FOLLOWS:

1. This matter is referred to United States Magistrate, Joseph M. Hood, for a ruling on plaintiff's motion.
2. After a ruling by the Magistrate, the Clerk of the Court shall forward this file to the undersigned Judge for consideration of pending motions.

This 5 day of December, 1977.

/s/ EUGENE E. SILER, JR.
JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO. 77-72

EDDIE THOMPSON, JR., ET AL.,
PLAINTIFFS,
VS:
PEOPLE'S LIBERTY BANK, ET AL.,
DEFENDANTS.

ORDER

(Filed December 8, 1977)

Plaintiff, Eddie Thompson, Jr., having moved the Court on November 25, 1977, for an Order compelling defendant, Richard S. Nelson, to answer fully interrogatories served upon him by plaintiffs on October 31, 1977 and being advised,

IT IS ORDERED herein as follows:

- (1) That said defendant answer the first aspect of Interrogatory 1 within thirty days of the date of this Order.
- (2) That said defendant answer Interrogatories 3, 4, 5, 6, 7, and 8 within thirty days of the date of this Order.
- (3) That all other aspects of plaintiffs' motion to compel be, and the same hereby are, **OVERRULED**.

Plaintiff, Eddie Thompson, Jr., having moved the Court for an Order awarding him the sum of \$100.00 for his costs in obtaining the Order to compel and being advised,

IT IS ORDERED that said motion be, and the same hereby is, **OVERRULED**.

This the 8th day of December, 1977.

/s/ JOSEPH M. HOOD
UNITED STATES
MAGISTRATE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO. 77-72

EDDIE THOMPSON, JR., ET AL.,
PLAINTIFFS,
VS:
PEOPLES LIBERTY BANK, ET AL.,
DEFENDANTS.

MEMORANDUM OPINION
(Filed June 30, 1978)

This is a pro-se civil rights action brought pursuant to 28 U.S.C. § 1334 and 42 U.S.C. §§ 1983, 1985 and 1986.

In their amended complaint plaintiffs also allege jurisdiction based on 28 U.S.C. § 1331. The defendants are the People's Liberty Bank, two officers of the bank, the bank's attorney, and the Covington City Manager.

The plaintiff's claim that the defendants, under color of state law, conspired to deprive plaintiffs of their rights by refusing to loan money to the plaintiffs and, thereafter, foreclosing on plaintiffs' property. This was allegedly done as a result of plaintiff's, Eddie Thompson, Jr., contesting an election in which he was a candidate for Covington City Commissioner. In the amended complaint, it is alleged that this action was taken because plaintiffs were of the Negro race. Plaintiffs demand that their property be restored in full, that they receive a \$100,000.00 declaratory judgment and a judgment for \$100,000.00 in punitive damages.

All Defendants have moved the Court to dismiss the complaint. Inasmuch as plaintiffs rely on several statutes for relief, the Court will consider each claim separately.

Section 1983 Claim

In order to establish jurisdiction under 42 U.S.C. § 1983, the plaintiffs must prove that the actions in question deprived them of a right, privilege or immunity secured by the Constitution and that the actions were taken "under color of State law." *Oller v. Bank of America*, 342 F.Supp. 21, 22 (N.D. Cal. 1972). "Action under color of state law" is the misuse of state power possessed by virtue of state law and made possible only because the wrongdoer is clothed with authority of state law. *Jones v. Citizens & So. Nat. Bank*, 262 F.Supp. 506, 509 (D.S.C. 1967).

Discriminations between private persons do not offend the Federal Constitution and afford no basis for the reme-

dies available under the civil rights statutes. *Local 10317, C.W.A. v. Methodist Hosp.*, 368 F.Supp. 564, 565 (E.D. Ky. 1974), *aff'd*, 511 F.2d 1403 (6th Cir. 1975). For state action to exist, the state must be involved in the conduct that caused the injury, and neither the receipt of state or federal assistance, nor the existence of a detailed scheme of state regulation will be sufficient to bring defendants' action within the purview of Section 1983 in the absence of a showing that the state significantly participated in the wrongful conduct. *Cannon v. University of Chicago*, 406 F.Supp. 1257, 1259 (N.D. Ill. 1976), *aff'd*, 559 F.2d 1063 (7th Cir. 1977). See also *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163 (1972).

It has been conclusively determined that repossession of property pursuant to state statutes does not constitute action under color of state law within the meaning of the civil rights statute. *Gary v. Darnell*, 505 F.2d 741 (6th Cir. 1974); *Turner v. Impala Motors*, 503 F.2d 607 (6th Cir. 1974); *Nichols v. Tower Grove Bank*, 497 F.2d 404 (8th Cir. 1974); *Adams v. Southern Calif. First Nat. Bank*, 492 F.2d 324 (9th Cir. 1973), *cert. denied*, 419 U.S. 1006 (1974). Furthermore, the foreclosure and sale of property pursuant to a deed of trust agreement does not have the requisite "significant state involvement" to constitute an act under color of state law. *Hoffman v. United States Dept. of H.U.D.*, 371 F.Supp. 576, 578 (N.D. Tex. 1974), *aff'd*, 519 F.2d 1160 (5th Cir. 1975).

Likewise, the Court is of the opinion that the foreclosure and other acts complained of in this action were not taken under color of state law and the plaintiffs' claim under 42 U.S.C. § 1983 will be dismissed.

Sections 1985 and 1986 Claims

Plaintiffs apparently base this claim of 42 U.S.C. § 1985 (3) which authorizes an action for damages if two or more persons conspire to deprive any person or class of persons of the equal protection of the law. Section 1986 provides for actions against persons who have knowledge of and the power to prevent wrongs covered in Section 1985, but fail to prevent such actions. In order to recover under these statutes, plaintiffs must prove the defendants conspired to deprive them of a constitutionally protected right.

Although some property rights are basic civil rights which are constitutionally protected, *Kroger v. Guarino*, 412 F.Supp. 1375 (E.D. Pa. 1976), *aff'd*, 549 F.2d 795 (3d Cir. 1977), in order to properly invoke a claim under the civil rights statute plaintiffs must have "a legitimate claim of entitlement" to the property right claimed. *Comptronics, Inc. v. Puerto Rico Tel. Co.*, 409 F.Supp. 800, 807 (D.P.R. 1975), *aff'd*, 553 F.2d 701 (1st Cir. 1977).

The plaintiffs have no "right" to financial backing, just as defendants have no duty to invest in plaintiffs' undertakings. *Railport v. Chase Manhattan Cap. Corp.*, 388 F.Supp. 1095, 1099 (S.D. N.Y. 1975). The Court finds that the actions complained of do not involve constitutionally protected rights. Therefore, the plaintiffs' 1985 and 1983 claims will be dismissed.

Section 1331 Claim

In their amended complaint, plaintiffs base the jurisdiction of this Court on 28 U.S.C. § 1331(a) which allows for actions to be brought in district court which arise under the Constitution, laws, or treaties of the United States. For reasons set out *infra*, the Court finds that this action did not arise under the Constitution, laws or

treaties of the United States, and this action will be dismissed. *Kinch v. Chrysler Credit Corp.*, 367 F.Supp. 436, 439 (E.D. Tenn. 1973).

Therefore, the Court finds it does not have subject matter jurisdiction and the plaintiffs have failed to state a claim upon which relief can be granted. Thus, the motions to dismiss will be granted pursuant to Rule 12(b) (1) and (6).

**Plaintiffs' Motions for Judgment on the Pleadings
and/or Default Judgment and Oral Argument**

Inasmuch as all defendants have either filed an answer or a motion to dismiss, the plaintiffs' motion for default judgment will be overruled.

The Court will also overrule plaintiffs' motions for judgment on the pleadings, for oral argument and for an order of this Judge disqualifying himself. As the motions to dismiss are granted, judgment for the plaintiffs on the pleadings would be inappropriate. The Court also feels no useful purpose would be served by oral argument. Finally, plaintiffs have asserted no grounds for the undersigned Judge to disqualify himself and the undersigned Judge does not know of any reasons under 28 U.S.C. § 455 to require him to be disqualified.

An order in accordance with this Memorandum Opinion will be entered this even date.

This 30 day of June, 1978.

/s/ EUGENE E. SILER, JR.
JUDGE

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON**

CIVIL ACTION NO. 77-72

**EDDIE THOMPSON, JR., ET AL.,
PLAINTIFFS.**

VS.

**PEOPLE'S LIBERTY BANK, ET AL.,
DEFENDANTS.**

ORDER

(Filed June 30, 1978)

In accordance with the Memorandum Opinion of even date, it is

ORDERED AS FOLLOWS:

1. The motions of all defendants to dismiss this Complaint are sustained and this action is hereby dismissed.
2. The motions of plaintiff for Judgment on the pleadings and/or default judgment and oral argument is hereby overruled.
3. The motion for an Order of this Judge disqualifying himself is hereby overruled.

This 30 day of June, 1978.

/s/ EUGENE E. SILER, JR.
JUDGE

No. 78-3525

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EDDIE THOMPSON, JR.,
PATRICIA THOMPSON,

Plaintiff-Appellants,

v.

PEOPLES LIBERTY BANK,
MER GRAYSON, JR.,
MER GRAYSON, SR.,
RICHARD NELSON,
JOSEPH CONDIT,

Defendants-Appellees.

ORDER

(Filed July 11, 1979)

Before: LIVELY and MERRITT, Circuit Judges, and PECK, Senior Circuit Judge

This appeal is before a panel of the Court pursuant to Rule 9 (a), Rules of the Sixth Circuit.

The plaintiffs filed a civil rights action seeking damages and other relief pursuant to 42 U.S.C. §§ 1983, 1985 and 1986. The pro se complaint and an amendment asserted jurisdiction under 28 U.S.C. § 1333 and 28 U.S.C. § 1331.

The district court found that the action did not arise under the Constitution or laws of the United States and that no claim for relief was stated under any of the civil rights laws relied upon by the plaintiffs. Accordingly, the action was dismissed pursuant to Rule 12(b) (1) and (6).

The gist of the complaint is that after one of the defendants agreed orally to loan the plaintiffs money to complete renovation of real estate, this defendant and other defendants conspired illegally to foreclose the mortgages on two parcels of real estate owned by the plaintiffs. It is further contended that the reason for the acts of the defendants is that the plaintiffs are Negroes and that Eddie Thompson contested a primary election in the City of Covington, Kentucky.

On appeal the plaintiffs contend that it is a denial of due process for a district court to dismiss a complaint without a hearing. No authority is cited in support of that argument, and none can be found. When it is apparent from examination of the complaint that the court lacks jurisdiction over the subject matter or that the pleading fails to state a claim upon which relief may be granted, the district court may dismiss without a hearing.

Upon consideration of the record on appeal together with the briefs of the parties the Court concludes that the questions upon which decision of this cause depends are so unsubstantial as not to require further argument. The plaintiffs are attempting to convert a state action into a federal one by conclusory allegations of conspiracy and race-motivated activities by the defendants. The district court properly held that the complaint was subject to dismissal. *Ohio Inns, Inc. v. Nye*, 524 F.2d 673, 676 (6th Cir. 1976).

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The judgment of the district court is affirmed. Rule
9(b) (3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN
Clerk

ISSUED AS MANDATE: September 18, 1979

COSTS: None

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NO. 78-3525

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EDDIE THOMPSON, JR.,
PATRICIA THOMPSON,

Plaintiffs-Appellants,

v.

PEOPLES LIBERTY BANK,
MERV GRAYSON, JR.,
MERV GRAYSON, SR.,
RICHARD NELSON,
JOSEPH CONDIT,

Defendants-Appellees.

ORDER

(Filed September 7, 1979)

BEFORE: LIVELY and MERRITT, Circuit Judges; and
PECK, Senior Circuit Judge.

No judge in active service on the court has moved for consideration en banc of the petition for rehearing filed herein by the plaintiffs-appellants. Accordingly, the petition for rehearing has been referred to the panel which decided the appeal.

Upon consideration of the petition for rehearing the court concludes that it did not misapprehend the issues

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presented by the appeal. Further the court has carefully considered the petition for rehearing and concludes that rehearing is not required.

The petition for rehearing is denied.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN
Clerk